

AMENDED IN SENATE JUNE 30, 2008

AMENDED IN ASSEMBLY MAY 1, 2008

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member Nakanishi

February 21, 2008

An act to amend Section 2417 of the Business and Professions Code, relating to the practice of medicine.

LEGISLATIVE COUNSEL’S DIGEST

AB 2398, as amended, Nakanishi. Practice of medicine: cosmetic surgery: employment of physicians and surgeons.

Existing law, the Medical Practice Act, establishes the Medical Board of California under the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

The Medical Practice Act restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law makes it unlawful to knowingly make, or cause to be made, any false or fraudulent claim for payment of a health care benefit, or to aid, abet, solicit, or conspire with any person to do so, and makes a violation of this prohibition a public offense.

This bill would authorize the revocation of the license of a physician and surgeon who practices medicine with, or serves or is employed as the medical director of, a business organization that provides outpatient elective cosmetic medical procedures or treatments, as defined, knowing that it is owned or operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists. The bill would also make a business organization that provides outpatient elective cosmetic medical procedures or treatments, that is owned and operated in violation of the prohibition, and that contracts with or employs a physician and surgeon to facilitate the offer or provision of those procedures or treatments that may only be provided by a licensed physician and surgeon, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

The bill would state that its provisions are declaratory of existing law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares that the*
2 *Medical Practice Act restricts the employment of physicians and*
3 *surgeons by a corporation or other artificial legal entity, as*
4 *described in Article 18 (commencing with Section 2400) of Chapter*
5 *5 of Division 2 of the Business and Professions Code, and that the*
6 *prohibited conduct described in subdivisions (c) and (d) of Section*
7 *2417 of the Business and Professions Code, as amended by this*
8 *act, is declaratory of existing law.*

9 ~~SECTION 1.~~

10 *SEC. 2. Section 2417 of the Business and Professions Code is*
11 *amended to read:*

12 2417. (a) If the Department of Insurance has evidence that a
13 business is being operated in violation of this chapter, Part 4

1 (commencing with Section 13400) of Division 3 of the
2 Corporations Code, or Chapter 1 (commencing with Section 1200)
3 of Division 2 of the Health and Safety Code, and that the business
4 may be in violation of Section 1871.4 of the Insurance Code or
5 Section 549 or 550 of the Penal Code, then the department shall
6 report the business, and any physician and surgeon suspected of
7 knowingly providing medical services for that business relative to
8 a violation of Section 1871.4 of the Insurance Code or Section 549
9 or 550 of the Penal Code, to the appropriate regulatory agency.
10 Upon receiving a report from the Department of Insurance of a
11 suspected violation, the regulatory agency shall conduct an
12 investigation. The requirement in subdivision (a) of Section
13 1872.95 of the Insurance Code for investigations to be conducted
14 within existing resources does not apply to investigations required
15 by this ~~section~~ *subdivision*. The Department of Insurance may
16 consult with the appropriate regulatory department or agency prior
17 to making its report to that department or agency, and this
18 consultation shall not be deemed to require the department or
19 agency to conduct an investigation.

20 (b) A physician and surgeon who practices medicine with a
21 business organization knowing that it is owned or operated in
22 violation of Section 1871.4 of the Insurance Code, Section 14107
23 or 14107.2 of the Welfare and Institutions Code, or Section 549
24 or 550 of the Penal Code shall have his or her license to practice
25 permanently revoked.

26 (c) A physician and surgeon who practices medicine with a
27 business organization that offers to provide, or provides, outpatient
28 elective cosmetic medical procedures or treatments, knowing that
29 it is owned or operated in violation of Section 2400, may have his
30 or her license to practice revoked. A physician and surgeon who
31 contracts to serve as, or otherwise allows himself or herself to be
32 employed as, the medical director of a business organization that
33 he or she does not own and that offers to provide or provides
34 outpatient elective cosmetic medical procedures or treatments that
35 may only be provided by the holder of a valid physician's and
36 surgeon's certificate under this chapter shall be deemed to have
37 knowledge that the business organization is in violation of Section
38 2400.

39 (d) A business organization that offers to provide, or provides,
40 outpatient elective cosmetic medical procedures or treatments, that

1 is owned or operated in violation of Section 2400, and that
2 contracts with, or otherwise employs, a physician and surgeon to
3 facilitate its offers to provide, or the provision of, outpatient
4 elective cosmetic medical procedures or treatments that may only
5 be provided by the holder of a valid physician's and surgeon's
6 certificate is guilty of violating paragraph (6) of subdivision (a)
7 of Section 550 of the Penal Code.

8 (e) For purposes of this section, "outpatient elective cosmetic
9 medical procedures or treatments" means a medical procedure or
10 treatment that is performed to alter or reshape normal structures
11 of the body solely in order to improve appearance.

12 ~~SEC. 2.~~

13 *SEC. 3.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.